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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re M.V., et al., Persons Coming Under
the Juvenile Court Law.

H041636
(Santa Clara County
Super. Ct. Nos. 1-14-JD022619,
JD022620, JD022621, JD022622)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

C.P.,

Defendant and Appellant.

Appellant is the mother of four children who have been adjudged dependents of the juvenile court. She challenges certain findings supporting the court's assumption of jurisdiction under Welfare and Institutions Code section 300,¹ and a supervision restriction placed on her visits with the children. As we will explain, the jurisdiction challenges are not justiciable, and the visitation order was not an abuse of discretion. Accordingly, we will affirm.

¹ Undesignated statutory references are to the Welfare and Institutions Code. Undesignated subdivision references are to section 300.

I. FACTUAL AND PROCEDURAL HISTORY

Fourteen-year-old M.V. was admitted to the Santa Clara Valley Medical Center emergency room on May 5, 2014 for a knee MRI ordered in November 2013. M.V.'s parents, C.P. (Mother) and E.V. Sr. (Father), had canceled the scheduled procedure several times. The results showed a tumor, possibly cancerous, and hospital staff were concerned that M.V. could lose her leg for lack of follow up medical treatment should she be released to her parents. The Santa Clara County Department of Family and Children's Services (Department) reported a high risk to M.V. for severe medical neglect at that time. Mother and Father agreed that M.V. would return to her paternal grandparents' home where she and her brother had been staying. Mother and Father also agreed to voluntary family reunification services and informal supervision services to address homelessness, domestic violence, and substance abuse concerns, and to alleviate the risk of general and medical neglect.

At a May 16 follow-up medical appointment, M.V., Father, and M.V.'s paternal grandmother were told that M.V. had bone cancer. Father was upset and angry, and a sobbing M.V. was consoled by her grandmother. Neither parent returned for a May 28 appointment to discuss M.V.'s diagnosis and treatment, which included immediate chemotherapy.

On June 2, 2014, the Department filed petitions on behalf of M.V. and her three younger siblings, E.V. (born in 2003), C.V. (born in 2005), and El.V. (born in 2010) under Welfare and Institutions Code section 300, and the children were placed in protective custody. All petitions alleged that the children had suffered, or were at substantial risk of suffering, serious physical harm or illness under subdivision (b). M.V.'s petition alleged emotional neglect under subdivision (c). In light of M.V.'s medical neglect, the Department alleged a substantial risk of abuse or neglect under subdivision (j) on behalf of the younger siblings.

Mother and Father did not appear at the June 5 initial hearing. The court detained the children, placed them with their paternal grandparents, and authorized supervised visits for Mother and Father. Also on June 5, Stanford University School of Medicine, Lucile Packard Children's Hospital wrote the Department, identifying the mass on M.V.'s knee as a synovial sarcoma tumor and expressing concern that the cancer may have spread to the pelvic lymph nodes. On June 11, the court authorized the hospital to perform an inguinal lymph node biopsy and possible dissection. That biopsy was negative, and chemotherapy on the tumor began on June 27. On October 6, the court authorized surgical removal of the tumor, and reconstruction of M.V.'s leg with a metal bone and knee replacement. With Mother and Father present, that surgery was performed on October 17.

Second amended petitions on behalf of the children were filed September 3, 2014, and a jurisdiction and disposition hearing was held on October 24. Counsel appeared for Mother and Father, who were not present, and Mother's request for a continuance was denied. The Department amended the petitions at the hearing, striking the subdivision (c) serious emotional damage allegations and amending the factual basis for jurisdiction under subdivision (b). The petitions alleged Mother's and Father's failure to take M.V. to 13 out of 18 prescribed physical therapy sessions following an earlier knee surgery in 2013, and their failure to follow through with post-surgery medical appointments. The petitions alleged Mother's failure to follow through with medical appointments for E.V. in 2004 after a hospitalization for asthma and bronchitis. The petitions cited the parents' failure to administer prescribed medication to C.V. for an enuresis condition, and El.V.'s petition alleged that he had not received proper care for his expressive language speech delays. The petitions alleged that Mother and Father both suffered from ongoing and untreated alcohol abuse and that their substance abuse and criminal histories placed the children at risk of harm in their care. The petitions alleged the parents' failure to

participate in services to address their domestic violence history also placed the children at risk.

At the October 24 hearing, the Department rested on the social worker's reports, and Father submitted to jurisdiction. Mother contested jurisdiction, objecting to certain factual allegations in the petitions as not supporting jurisdiction. The court found the petitions true, observing that there was ample evidence to substantiate each allegation and that the Department had met its burden by a preponderance of the evidence. The court found by clear and convincing evidence that the welfare of the children required removal from their parents' custody, and the children's placement with the paternal grandparents was continued. The court adopted the Department's recommended case plan requiring Mother and Father to participate in and successfully complete two parenting courses, random alcohol and/or drug testing, substance abuse and domestic violence assessments, and follow-up treatment as recommended by the social worker. The court authorized semi-weekly supervised visits with both parents. Mother appeals.

II. DISCUSSION

A. JURISDICTION CHALLENGES

Section 300 provides for juvenile court jurisdiction over any child who comes within its 10 subdivisions, each describing one or more means of assuming dependency jurisdiction. (§ 300, subds. (a)-(j).) The second amended petition filed on behalf of M.V., as amended at the jurisdiction and disposition hearing, alleged jurisdiction under subdivision (b).² The second amended petitions filed on behalf of E.V., C.V., and El.V.

² Under subdivision (b), a child comes within the court's jurisdiction when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of [the child's] parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical

(Continued)

alleged jurisdiction under subdivisions (b) and (j).³ Mother does not contest the juvenile court's jurisdiction over her children under subdivisions (b) and (j) to the extent that jurisdiction is based on her failure to provide adequate medical care. Nor does she contest jurisdiction based on Father's conduct. Mother seeks review only of the conclusions and factual allegations that her substance abuse, failure to address violence in the home, and criminal history put her children at risk in her care.

1. Justiciability

In *In re I.A.* (2011) 201 Cal.App.4th 1484, 1489, the court explained that an appeal is justiciable when it raises a "present, concrete, and genuine dispute as to which the court can grant effective relief[.]" *In re I.A.* involved the juvenile court's assertion of dependency jurisdiction over a child based on the mother's drug abuse and the father's domestic violence and criminal history. (*Id.* at p. 1487.) The court concluded that the father's appeal, which challenged the jurisdiction findings involving only his conduct, was not justiciable because the court could not render any relief "that would have a practical, tangible impact on [the father's] position in the dependency proceeding." (*Id.* at p. 1492; accord *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Shelly J.* (1998) 68 Cal.App.4th 322, 330.) *In re I.A.* acknowledged a reviewing court's discretion to address alternative jurisdictional findings. (*In re I.A.*, at p. 1493.) Still, it dismissed the appeal because the father could not identify "a single specific legal or practical consequence from [the juvenile court's] finding, either within or outside the dependency proceeding." (*Ibid.*)

treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

³ Subdivision (j) provides for juvenile court jurisdiction when "the child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

Mother recognizes that the issues she raises on appeal present no genuine challenge to the court's assumption of dependency jurisdiction. Any decision we might render on her claims would not result in a reversal of the juvenile court's order asserting jurisdiction, or the personal jurisdiction asserted over either parent. Still, Mother argues that her claims are justiciable because a disposition by this court striking unsubstantiated allegations and reversing any order for corresponding services would have a practical impact on the dependency proceedings. She also argues that discretionary judicial review is warranted to protect against prejudice. Mother asserts that the juvenile court would not have ordered certain parenting classes, random alcohol and drug testing, and substance abuse and domestic violence assessments had it not found that substance abuse, domestic violence, and her criminal history supported dependency jurisdiction. She argues further that, because of her poverty, those conditions will create financial and emotional strain and likely set her up to fail at reunification.

Section 356 requires a juvenile court to find "whether or not the minor is a person described by Section 300 and the specific subdivisions of Section 300 under which the petition is sustained." We review the jurisdictional finding for substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Whether or not our review reaches each allegation made under a given subdivision of section 300, we conclude that Mother's claims are not justiciable. Our ruling would not affect the juvenile court's jurisdiction. Nor do we see it impacting the related disposition, including specific elements of Mother's case plan. Ultimately, we do not find any practical tangible consequence on the dependency proceeding which would flow from our review of the sustained allegations she challenges.

A juvenile court's disposition may address impediments to a parent's ability to care for her children shown in the record, even if those impediments are not a basis for jurisdiction. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008.) Here, the social worker recommended a 16-week parenting without violence class "given the history of

violence in the home whether it be yelling and verbal arguments to physical altercations,” and a domestic violence assessment “to identify the parent’s current needs and issues related to domestic violence, and if necessary, follow the recommendations of the assessor to participate in services.” The record shows that substance abuse and domestic violence have contributed to the children’s risk of harm, warranting the recommended services to address those impediments to reunification. In 2008, Father acknowledged a 2004 battery conviction involving domestic violence against Mother. Mother acknowledged a domestic violence history at that time, but claimed no incidents for two years. In 2011 E.V. told a social worker that Father threw Mother to the ground and threw a bike on her, and it happened more than once. In December 2013 police responded to a domestic violence call. M.V. had been struck by a piece of a chair Father had broken when arguing with Mother. When M.V. was in the hospital in May 2014, E.V. admitted that his parents could use help because they argue often. Yet Mother has repeatedly rejected any services to address this relationship dynamic.

Regarding substance abuse, E.V. reported in 2014 that Father drinks every day and Mother drinks half as much as Father. Mother was convicted in 2009 for public intoxication, and in 2013, after testing positive for opiates, she admitted taking M.V.’s prescription pain killers. C.V. was diagnosed with fetal alcohol syndrome, but Mother denies abusing alcohol, including while pregnant with C.V. According to the social worker, “[t]he mother’s general denial of ever having an issue with substances and failure to engage and/or complete services and submit to random drug testing signifies to this worker that the mother continues to fail to recognize the problem and that it continues to impair her ability to parent.” In light of the record, we reject Mother’s claim that the case plan would have been different if allegations of her failure to address a history of violence in the home, her substance abuse, or her criminal history were removed as bases for the juvenile court’s jurisdiction.

Mother's poverty does not change our conclusion that her jurisdiction challenges are not justiciable. The juvenile court was clearly aware of the family's financial struggles and transient status when it found jurisdiction and adopted the Department's case plan. At the close of the October 24 hearing, in an effort to engage the parents in reunification, the court scheduled a 45-day review, commenting: "There [are] also issues of homelessness and poverty, and so if they seem to be willing to engage I want the Department to do whatever it can to facilitate engagement."

2. Prejudice

Mother urges us to exercise our discretion to review her jurisdiction claims because the juvenile court's findings will prejudice her if she is involved in any future child dependency or family court proceeding involving her current children or any unborn children. Mother cites several cases where the appellate courts have reviewed alternate bases for section 300 jurisdiction, but those cases do not persuade us to exercise discretionary review here. In *In re Anthony G.* (2011) 194 Cal.App.4th 1060, *In re Drake M.* (2012) 211 Cal.App.4th 754, and *In re Christopher R.* (2014) 225 Cal.App.4th 1210, the juvenile court upheld section 300 jurisdiction on multiple bases. In each case only one basis implicated the father, and the bases implicating the mother either were not challenged or were upheld. Although the court in *In re Anthony G.* recognized that it could affirm a jurisdiction finding on any sustained basis supported by substantial evidence, it elected to address the father's subdivision (g) failure to support claim because it was "not persuaded that [it] should refrain from" doing so. (*In re Anthony G.*, at p. 1065.) Similarly electing to review the only basis for jurisdiction implicating the father, marijuana abuse, the court in *In re Drake M.* noted that offending parent status "may have far reaching implications" respecting dependency proceedings and parental rights. (*In re Drake M.*, at p. 763.) In doing the same, *In re Christopher R.* cited to *In re Drake M.* with approval. (*In re Christopher R.*, at p. 1219, fn. 7.) Mother's appeal is distinguishable from those cases because Mother does not contest the juvenile court's

jurisdiction based on her own medical neglect. Her children, and she by extension, are subject to that jurisdiction regardless of her challenge to other jurisdictional bases.

In re D.C. (2011) 195 Cal.App.4th 1010 and *In re D.P.* (2014) 225 Cal.App.4th 898 are also distinguishable. *In re D.C.* concluded that a sustained allegation involving an affirmative act of cruelty under subdivision (i) “could be prejudicial.” (*In re D.C.*, at p. 1015.) Similarly, the contested basis for jurisdiction in *In re D.P.* was an intentional injury under subdivision (a) which, in the court’s view, “has the potential to impact future dependency proceedings.” (*In re D.P.*, at p. 902.) The petitions here allege neglect, not acts of cruelty or non-accidental harm.

We reject Mother’s argument that the challenged allegations could place her on the Department of Justice’s Child Abuse Central Index. It is the Department’s duty, independent of any juvenile court proceeding, to report known or suspected cases of severe neglect to the Department of Justice. (Pen. Code, § 11169, subd. (a).) That duty is triggered by an investigator’s determination that it is more likely than not that severe neglect has occurred, not by the sustaining of a section 300 petition. (*Ibid.*, Pen. Code, § 11165.12, subd. (b).) The only consequence of a sustained petition in this context is that an affected parent cannot administratively challenge inclusion on the index. (Pen. Code, § 11169, subd. (e).) Severe neglect is defined in Penal Code section 11165.2, subdivision (a) as “the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. [It] also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3,⁴ including the intentional failure to provide adequate food, clothing, shelter, or

⁴ Penal Code section 11165.3 pertains to willfully harming or injuring a child, or willfully placing a child’s health in danger.

medical care.” The statutory basis for placement on the index does not encompass the substance abuse or domestic violence findings Mother challenges in this appeal.

Mother also claims prejudice because the allegations she challenges could be used against her in future dependency proceedings to support a risk of harm finding, or in family court custody or visitation proceedings. This prejudice claim is empty because Mother challenges none of the facts alleged to support jurisdiction, only the juvenile court’s conclusions that substance abuse and domestic violence warrant jurisdiction. Those facts, which we have already noted show a history of alcohol abuse and violence in the home, could be considered in future proceedings regardless of their inclusion in a section 300 petition. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216 [“ ‘ “[p]ast conduct may be probative of current condition” if there is reason to believe that the conduct will continue.’ ”].)

Nor would the sustained allegations themselves lead to a future bypass of reunification services under section 361.5, subdivision (b), as Mother argues. Under that section, the juvenile court is not required to order reunification services when extreme circumstances are present such as the physical abuse, sexual abuse, or death of a child. Reunification services may also be denied to a parent who has “a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.” (§ 361.5, subd. (b)(13).) As the Department concedes in its brief, in a future proceeding “additional substance abuse and failure to engage in treatment on the part of [Mother] would need to be affirmatively proven, and the current petition would not support those [section 361.5, subdivision (b)(13)] findings standing alone.” For these reasons, Mother’s arguments regarding potential prejudice do not

persuade us to reach the merits of her challenges to the juvenile court's jurisdictional order.

B. DISPOSITION CHALLENGES

The court ordered supervised visitation for Mother, a minimum of two times a week for two hours. Mother requested unsupervised visits, and she argues on appeal that requiring supervision is not in the best interest of the children, thus constituting an abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 456 [orders regarding visitation are reviewed for a clear abuse of discretion].) Mother points to her attendance at a parent orientation class in June, her strong bond with the children, their feeling safe in her care, and the positive visits described in the social worker's July 2014 report.

Mother was not present at the October 24 jurisdiction and disposition hearing, and her attorney had no information about her absence. The social worker's August 20 addendum revealed that Mother had not attended parent orientation on July 15, nor had she submitted to any drug testing that month. The social worker reported in a September 26 addendum that Mother had not been engaged in services, she was not drug testing, and she had not visited the children since August 26. At that visit, the children initiated most of the contact, and Mother needed prompting to attend to El.V.'s challenging behavior. Given the children's special needs, Mother's failure to engage in services, including supervised visitation, and her unexplained absence from the October hearing when disposition orders were made, the juvenile court did not abuse its discretion by requiring that her visits be supervised.

III. DISPOSITION

The judgment is affirmed.

Grover, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.

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